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KIERNAN MAJOR

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

KIERNAN MAJOR,

Defendant.

Case No. 22-387-DSF

**REPLY TO GOVERNMENT'S
SUBMISSION OF
RESTITUTION REQUESTS**

Hearing Date: 3/18/24

Defendant, Kiernan Major, by and through his attorney of record, Neha A. Christerna, hereby files his reply to the Government's Submission of Restitution Request ("Gov's Request").

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: March 14, 2024

By /s/ Neha A. Christerna

NEHA A. CHRISTERNA
Deputy Federal Public Defender
Attorney for KIERNAN MAJOR

1 “The goal of restitution under the MVRA is to make the victim whole.” *United*
 2 *States v. Anderson*, 741 F.3d 938, 951 (9th Cir. 2013) (citing *United States v.*
 3 *Yeung*, 672 F.3d 594, 600–01 (9th Cir. 2012)). As such, the Ninth Circuit has
 4 “emphasized that the amount of restitution under [§ 3663] is limited to the
 5 victim’s *actual losses*.” *United States v. Fu Sheng Kuo*, 620 F.3d 1158, 1164 (9th Cir.
 6 2010) (quotations omitted) (emphasis in original); *see also Hughey v. United*
 7 *States*, 495 U.S. 411, 416 (1990) (observing that restitution “is intended to compensate
 8 victims only for losses caused by the conduct underlying the offense of conviction”).
 9 “Accordingly, ‘the district court may not order restitution to reflect Defendants’ ill-
 10 gotten gains.’” *Anderson*, 741 F.3d at 951 (quoting *Fu Sheng Kuo*, 620 F.3d at 1166).
 11 Also, any loss calculation should account for the value of any property returned to the
 12 putative victims. 18 U.S.C. § 3663A(b)(1)(B)(ii).

13 The loss must be sufficiently connected to the offense. “[R]estitution ‘may be
 14 awarded only for losses for which the defendant’s conduct was an actual *and* proximate
 15 cause.’” *United States v. Swor*, 728 F.3d 971, 974 (9th Cir. 2013) (quoting *United*
 16 *States v. Kennedy*, 643 F.3d 1251, 1261 (9th Cir. 2011) (internal quotation marks
 17 omitted) (emphasis added in *Swor*)). Put differently, “the government must ‘show not
 18 only that a particular loss would not have occurred but for the conduct underlying the
 19 offense of conviction, but also that the causal nexus between the conduct and the loss is
 20 not too attenuated (either factually or temporally).’” *United States v. Wong*, No. 12-
 21 0483, 2014 WL 2700925, at *1 (N.D. Cal. June 13, 2014) (quoting *Swor*, 728 F.3d at
 22 974) (internal quotations and citations omitted).

23 Ultimately, “[t]he government has the burden of proving the amount of the loss
 24 by a preponderance of the evidence.” *Anderson*, 741 F.3d at 951 (citing *Yeung*, 672
 25 F.3d at 601 (internal citations omitted)); *see* 18 U.S.C. § 3664(e). The court “should
 26 not rely on its calculation of the loss under the Sentencing Guidelines to determine the
 27 amount of restitution as the two measures serve different purposes and utilize different
 28 calculation methods.” *Anderson*, 741 F.3d at 952 (citing *United States v. Gossi*, 608

1 F.3d 574, 580–82 (9th Cir. 2010) (“Sentencing, unlike restitution, focuses on the
2 criminal defendant. . . . Restitution clearly focuses on the *victim*, not the individual
3 defendant”) (emphasis added)). “[A] ‘back-of-the-envelope’ approach simply will not
4 do.” *Anderson*, 741 F.3d at 951–52. While “the MVRA affords the district court a
5 degree of flexibility in assessing the victim’s actual losses[,] . . . ‘the district court may
6 utilize only evidence that possesses sufficient indicia of reliability to support
7 its probable accuracy.’” *Id.* (quoting *Waknine*, 543 F.3d at 557).

8 Mr. Major does not object to the Court ordering restitution for Witness 1 and
9 Witness 2 to cover all the therapy bills. Mr. Major disputes the following whether in
10 entirety or whether the amount should be reduced.

11 1. Therapy Bills

12 As stated above, Mr. Major does not object to restitution with respect to the
13 therapy bills.

14 2. Moving Expenses

15 Witness 1 is seeking moving expenses related to her employment with Mr.
16 Major. This cost is unrelated to the offense at issue, which is threats, not fraud. This
17 Mr. Major should not be ordered to pay for this move.

18 Witness 2 is seeking moving expenses for two separate moves. The first being
19 due to being unsafe and the second due to feeling safe. This amount should be reduced
20 to a single move.

21 3. Hotel, Meal Expenses, Rideshares and Tracphone

22 The government seeks restitution for Witness 1, for reimbursement for hotel,
23 meals, rideshares, and a tracphone. These expenses occurred during the course of Mr.
24 Major’s professional relationship with Witness 1. Mr. Major was not charged or
25 convicted of fraud and therefore, these expenses are not connected to the offense.
26 Moreover, Witness 1 was residing with Mr. Major during this time. There is no
27 evidence to differentiate which expenses belong to Witness 1, to Mr. Major or whether
28 they were collective expenses.

1 prison and will have to rebuild his work life when he is release. The Court should set a
2 payment schedule of \$50/month, and interest should be waived, 18 U.S.C.
3 §3612(f)(3)(A).
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5 Respectfully submitted,
6 CUAUHTEMOC ORTEGA
7 Federal Public Defender

8 DATED: March 14, 2024

9 By /s/ Neha A. Christerna
10 NEHA A. CHRISTERNA
11 Deputy Federal Public Defender
12 Attorney for KIERNAN MAJOR
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